In the Supreme Court of the United States

OCTOBER TERM, 1924

No. 29

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, APPELLANT

v.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

STATEMENT

Appellant, a land-grant railroad company, in 1915, 1916, and 1917 published and filed coal rates *via* Birmingham and Flomaton to Mobile and Pensacola for bunkerage and purposes other than export of $1.10, $1.10, and $1.15 per ton of 2,000 pounds from Groups 1, 2, and 3, respectively. (Tr. 7; 57 Ct. Clms. 269.)

The tariffs further provided that on coal paying the L. & N. a road-haul revenue of $1 per ton or more to Mobile and Pensacola the cost of trans-

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ferring the coal from cars onto barges or into vessels through the hoists at Mobile and Pensacola will be assumed by the L. & N.; on coal paying the L. & N. to Mobile and Pensacola a road-haul revenue of less than $1 per ton the cost of transferring the coal from cars onto barges or into vessels will be 10 cents per ton plus $2 per car switching or spotting charge in addition to the freight rate, subject, however, to a maximum total charge of $1 per ton, including transportation and hoisting and switching (or spotting) service. (Tr. 7; 57 Ct. Clms. 269, 271.)

The following transactions are involved:

1. On March 15, 1915, Gulf States Coal Company contracted with Engineer Corps to furnish and have delivered 18,000 tons of coal from the Dixiana mines onto United States barges, or in bunkers, in carload lots from hoists at Mobile, at $1.38 per ton, the United States to pay the freight thereon and the contractor to transfer the coal at its expense to the barges, the coal to be inspected either when it was loaded on or unloaded from the cars. The coal was shipped to Mobile on Government bills of lading, which were accomplished, the coal inspected at that place, and none of it was rejected. Part was delivered for Government engineering work at or near Mobile, and part was switched to wharves of the Mobile Coal Company and loaded from its hoists onto Government barges, which were towed by Government tugs to Fort Morgan, Pascagoula, and Gulfport, all on the Gulf coast west of Mobile, where it was to be used for Government engineering work.

For the coal to be used at Mobile, the transportation was paid for by the Government at the basic rate of $1.10 per short ton, and that to be used near Fort Morgan, Pascagoula, and Gulfport at the basic rate of $1 per short ton, with land-grant deductions therefrom. L. & N. rendered its bills to the Government for Auditor's settlement, on the approved form of voucher for transportation, land grant involved, upon which it stated the basic rate and the amount to be deducted on account of land grant, and claimed the net amount remaining after the deduction of the land grant.

In no case did it claim payment upon other than a land-grant basis, but it included in its bills and claimed switching, or spotting, and hoisting charges. The Auditor disallowed the switching and hoisting charges, but otherwise allowed the claims as filed, except that on two shipments the Auditor determined the basic rate to be $1 per ton instead of $1.10 per ton, as claimed, and corrected the land grant accordingly. L. & N. protested the disallowance of the switching and hoisting charges (except as to settlements set out in Finding XIII, as to which no protests of any kind were made), and protested also the application of the $1 per ton basic rate instead of the $1.10 per ton rate on bills of lading numbered 24451 and 24452. As to the disallowances in the Auditor's settlement covering these two bills of lading, L. & N. applied to the Comptroller of the Treasury for a revision of the settlement. It claimed the basic rate of $1.10 per ton and that after land-grant

deductions the road-haul was less than $1 per ton, and therefore the switching and hoisting charges applied. The Comptroller held that charges for Government transportation are based upon commercial rates from which land-grant deductions follow by operation of law; that the $1 rate was the proper rate on the shipments involved and disallowed the switching and hoisting charges. (Tr. 9).

2. On August 21, 1916, Imperial Coal & Coke Company contracted with the Engineer Corps to deliver on the cars at its mines at Dixiana 12,000 tons of coal at $1.50 per ton. (Tr. 9; 57 Ct. Clms. 272.) The specifications provided for adding the land-grant freight rate from the mines to Mobile to the price bid for mine delivery for comparison of bids, and that the coal should be inspected when loaded on or unloaded from the cars, which was subject to rejection until final inspection and acceptance. This coal was also shipped on Government bills of lading over the L. & N. to Mobile, and appears to have been handled and disposed of in a manner similar to that of the shipments of the Gulf States Coal Company with the same course in respect to presentation of bills by the L. & N. with land-grant deductions, which were paid by the Government, minus the additional switching and hoisting charges which were disallowed by the Auditor. (Tr. 9, 10; 57 Ct. Clms. 272.)

3. In 1914, 1915, 1916, and 1917 other coals (part without formal contract) were purchased on advertisements, specifications, bids, and acceptances from

different mines in the Birmingham district to be shipped to the engineer officer at Pensacola (Tr. 10; 57 Ct. Clms. 273), on Government bills of lading, which were duly accomplished, and the coal inspected and accepted at Pensacola by the proper Government officials. The coal was for use at or near Pensacola and was paid for at the rate of $1.10 per ton. (Tr. 11; 57 Ct. Clms. 274.)

4. On April 8, 1915, Zimmern Coal Company bid $3.59 per long ton, or if Government bills of lading should be furnished, $2.36 per long ton, to furnish 250 long tons of coal to the Assistant Paymaster on the U. S. S. *Tonopah*, Naval Station, Pensacola, to be delivered alongside the vessel at Pensacola on April 20, 1915, free of charge, subject to the usual inspection and test. The bid of $2.36 per long ton was accepted and Government bills of lading were furnished for the shipment. The L. & N. transported the coal and the land-grant deductions were made. (Tr. 11; 57 Ct. Clms. 274.)

Under the contract with the Gulf States Coal Company, L. & N. made no protest whatever against settlements for transporting coal to Mobile under sixteen separate and distinct bills of lading on which the land-grant deductions were made and from which the hoisting and switching charges were disallowed by the Auditor; nor did the L. & N. protest against settlement for transporting coal to Mobile under the contract with Imperial Coal & Coke Company on four bills of lading on which the land-grant deductions were made and from which the hoisting

and switching charges were disallowed by the Auditor. (Tr. 11; 57 Ct. Clms. 274.) Nor did the L. & N. protest against settlement for transporting coal to Pensacola on two other Government bills of lading on which land-grant deductions were made and the hoisting and switching charges disallowed by the Auditor. In all other cases the L. & N. protests were limited to the disallowances of switching and hoisting charges and the adoption of the $1 basic rate instead of the claimed $1.10 rate as to the shipments covered by two bills of lading. (Tr. 12; 57 Ct. Clms. 275.) The Court of Claims found the $1 rate was correct. (Tr. 13; 57 Ct. Clms. 277.)

The Court of Claims further found that the regulations of the Treasury Department in force at the time the coal in question was hauled, provided that Government bills of lading were to be issued for the transportation of Government property only; that prepayment of charges in no case was to be demanded by the carrier, nor collected from the consignee; that presentation to the officer indicated on the face of the bill of lading, when properly accomplished, and attached to the freight voucher prepared on the authorized Government form, payment was to be made to the last carrier, unless otherwise specifically stipulated; that when shipments were made under contract or special rates notation of such fact should appear on the face of the bill of lading; that shipments were required to be made at the restricted or limited valuation specified in the tariff or classification at or

under which the lowest rate was available unless otherwise indicated on the face of the bill of lading. (Tr. 12; 57 Ct. Clms. 275.)

There was no evidence that the L. & N. knew of the terms of all or any of the contracts or orders, nor was there evidence proving or tending to prove that the L. & N. was deceived, misled, or mistaken as to any material fact, or that it did not act, in presenting its bills at land-grant rates, with full knowledge of all of the facts. (Tr. 12; 57 Ct. Clms. 275.) The Court of Claims dismissed the petition *in toto*. (*Louisville & Nashville Railroad* v. *United States*, 57 Ct. Cls. 268.)

ARGUMENT

The case is companion to *Illinois Central Railroad* v. *United States*, 265 U. S. 209, and *Chicago, Milwaukee & St. Paul Railway* v. *United States*, No. 83, this Term. The *Illinois Central* case and the instant case were fixed for hearing together as Nos. 248 and 247 at the last Term and were reached on April 28, 1924.

When the instant case was called for argument with the *Illinois Central* case last April the record in the *L. & N.* case had not been printed and the case was passed for the Term on the stipulation [1] of counsel.

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[1] That stipulation is as follows:

"It is hereby stipulated and agreed that the printing of the record in this case, the briefing and hearing be deferred until the decision of this Court has been announced in the case of *Illinois Central Railroad Co.* v. *United States*, No. 248, on the docket of this Court for the October Term of 1923."

The *Illinois Central* case was argued and on May 26, 1924, this Court affirmed the judgment of the Court of Claims. On June 9, 1924, this Court denied the petition of the Illinois Central for rehearing.

On the authority of the *Oregon-Washington Railroad* v. *United States*, 255 U. S. 339, the Court of Claims dismissed both the instant case (57 Ct. Clms. 268) and the *Illinois Central* case (57 Ct. Clms. 277). The *Chicago, Milwaukee & St. Paul* case was dismissed by the Court of Claims without citation of authority (57 Ct. Clms. 569).

On the authority of the *Oregon-Washington, etc.*, case, *supra*, on October 13, 1924, in *Northern Pacific Railway* v. *United States*, No. 21, this Term, this Court, *per curiam*, affirmed the judgment of the Court of Claims in a similar case.

To prevail, therefore, appellant must overthrow a mountain range of opinions adverse to its contentions, viz:

Oregon-Washington Railroad & Navigation v. *United States*, 255 U. S. 339;

Illinois Central Railroad v. *United States*, 265 U. S. 209;

Northern Pacific Railway v. *United States*, per curiam, October 13, 1924;

Louisville & Nashville v. *United States*, 57 Ct. Clms. 268;

Illinois Central v. *United States*, 57 Ct. Clms. 277;

Chicago, Milwaukee & St. Paul v. *United States*, 57 Ct. Clms. 569.

The argument that the L. & N. is entitled to recover the hoisting and switching charges because the application of the land-grant rates reduced the rate to the L. & N. to less than $1 per ton may not prevail because, as held by the Court of Claims, "Government rates over land-aided roads are always predicated on commercial rates from which deductions follow by operation of law in return for benefits conferred." (Tr. 13.) In other words, the Government is entitled to have its freight carried at regular commercial rates to be paid partly in cash and partly in land grants. Appellant would disregard the land-grant payments utterly and then seek to recover from the Government on the ground that it had been accorded reduced freight rates because the L. & N. received the benefit of land grants, and thereby the Government became liable for the hoisting and switching charges. This self-destructive proposition may be passed.

The judgment of the Court of Claims should be affirmed.

BLACKBURN ESTERLINE,
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